

## § 1150.41

grounds may be filed at any time but must be filed sufficiently in advance of the effective date to allow the Board to consider and act on the petition before the notice becomes effective. Petitions for reconsideration must be filed within 20 days of the FEDERAL REGISTER publication.

(7) The exemption generally will be effective 70 days after publication in the FEDERAL REGISTER, unless stayed. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Board shall summarily reject the exemption notice.

(8) Where significant environmental issues have been raised or discovered during the environmental review process, the Board shall issue, on or before the effective date of the exemption, a final decision allowing the exemption to become effective and imposing appropriate mitigating conditions or taking other appropriate action such as selecting the "no build" alternative.

(9) Where there has been full environmental review and no significant environmental issues have been raised or discovered, the Board, through the Director of the Office of Proceedings, shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact (FONSI) to show that the environmental record has been considered (see 49 CFR 1105.10(g)).

(10) The Board, on its own motion or at the request of a party to the case, will stay the effective date of individual notices of exemption when an informed decision on environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective. Stays will be granted initially for a period of 60 days to permit resolution of environmental issues and issuance of a final decision. The Board expects that this 60-day period will usually be sufficient for these purposes unless preparation of an EIS is required. If, however, environmental issues remain unresolved upon expiration of this 60-day period, the Board, upon its own motion, or at the request of a party to the case, will extend the stay, as necessary to permit completion of environmental review and issuance of a final decision. The

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Board's order will specify the duration of each extension of the initial stay period. In cases requiring the preparation of an EIS, the Board will extend the stay for a period sufficient to permit compliance with the procedural guidelines established by the Board's environmental regulations.

(d) *Third-Party Consultants.* An environmental and historic report required under 49 CFR 1105.7 and 1105.8 will not be required where a petitioner engages a third-party consultant who is approved by SEA and acts under SEA's direction and supervision in preparing the EA or EIS. In such a case, the third-party consultant must act on behalf of the Board, working under SEA's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is prepared under SEA's direction and then submitted to SEA for its final review and approval. See 49 CFR 1105.10(d).

[61 FR 29974, June 13, 1996, as amended at 64 FR 53268, Oct. 1, 1999]

### Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers

SOURCE: 61 FR 32355, June 24, 1996, unless otherwise noted.

#### § 1150.41 Scope of exemption.

Except as indicated in paragraphs (a) through (d) of this section, this exemption applies to acquisitions or operations by Class III rail carriers under section 10902. This exemption also includes:

(a) Acquisition by a Class III rail carrier of rail property that would be operated by a third party;

(b) Operation by a Class III carrier of rail property acquired by a third party;

(c) A change in operators on such a line; and

(d) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party, that occurs at the time of the purchase.